

INFORMATION BULLETIN #20

SALES TAX

MAY 2007

(Replaces Information Bulletin #20, dated February 2005)

DISCLAIMER: Informational bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Auctions/Casual Sales Exemption Rules

REFERENCES: IC 6-2.5-4-12, 45 IAC 2.2-4-33, 45 IAC 2.2-4-34, 45 IAC 2.2-4-35

I. GENERAL RULE FOR ALL AUCTIONS

AN AUCTION COMPANY OR AUCTIONEER MUST COLLECT SALES TAX unless the sale qualifies as a “casual” sale. Sales at auction that meet **ALL** of the following conditions qualify as casual sales and such sales are not subject to sales tax collection by the auction company or auctioneer, nor is use tax due by the purchaser.

- a. The sale must be held on premises owned, leased or provided by the owner of the tangible personal property being sold. The sale cannot be conducted at a site owned, leased or provided by the auction company or auctioneer.
- b. The tangible personal property must not have been purchased for resale

nor consigned by a third party for sale.

Sales which meet both requirements above are considered to be casual sales. Example: An auctioneer conducts an auction at the residence of the owner of numerous items of household goods. Since the auction/sale is conducted at the residence of the owner, and the items were not purchased for resale, the sale qualifies as a "casual sale" and all items sold are exempt from sales tax and use tax.

AUCTION COMPANIES AND AUCTIONEERS MUST COLLECT SALES TAX at all auctions where either of the following conditions exist.

- a. The auction/sale is held at premises owned, leased or provided by the auction company or auctioneer.
- b. The tangible personal property was purchased for resale by the owner or was consigned by a third party for sale.

In the event that certain tangible personal property being sold at a particular auction meets condition (b), but other property fails to meet condition (b), the auction company or auctioneer becomes a retail merchant and sales tax must be collected on the sale of all property meeting the provisions of condition (b).

Before conducting a taxable sale a licensed auction company or auctioneer must obtain a Registered Retail Merchant Certificate (RRMC) from the Department of Revenue for sales tax purposes. A Business Tax Application, Form BT-1, available on the Department's Website, must be completed to obtain a business license.

II. AUCTIONS OF VEHICLES, TRAILERS, WATERCRAFT OR AIRCRAFT

Note: Guidelines for auctions of aircraft should be obtained by contacting the Aeronautics Section of the Department of Revenue as some forms and other requirements vary from those listed for vehicles, trailers and watercraft.

A. Vehicles, Trailers, Watercraft and Aircraft Sold at Auction

All sales of vehicles, trailers, watercraft and aircraft sold by a licensed auction company or auctioneer are subject to the Indiana sales tax if such auction is conducted at a site owned, leased or provided by the auction house or auctioneer. All sales are subject to the Indiana sales tax unless the buyer presents a valid, fully executed exemption form to the auction house or auctioneer. Forms acceptable as proof of exemption are the ST-105D (purchases by licensed dealers for resale) or the

ST-108A (sales to non-dealers). If the auction house or auctioneer is registered as a dealer with the Indiana Bureau of Motor Vehicles (BMV), and is selling in the capacity as a dealer, the ST-108 and ST-108E must be used when the auction house or auctioneer is selling their own vehicles titled in the auction company's or auctioneer's name. ST-108A is to be used when selling vehicles not owned by the auction company or auctioneer, nor titled in the auction's name. **The responsibility to collect, report and remit the sales tax to the Department of Revenue is that of the auction house or auctioneer for sales at an auction site owned, leased or provided by the auction company or auctioneer or a third party.**

B. Auction House or Auctioneer Responsibilities For Vehicle or Watercraft Auctions

1. Register as a Registered Retail Merchant with the Department of Revenue.
2. Collect sales tax on all vehicles, trailers, watercraft or aircraft sold at auction unless the buyer issues a fully executed exemption certificate to the auction house or auctioneer.
3. File ST-103 Sales Tax Returns in the auction house's or auctioneer's legal entity name and remit the sales tax collected under the Indiana Taxpayer Identification Number (TID).
4. Auction companies or auctioneers acting in the capacity of a BMV registered "dealer", selling their own inventory, shall provide the buyer with a ST-108 or ST-108E form evidencing the collection or exemption of sales tax by the auction house or auctioneer for all sales. Forms acceptable as proof of exemption are the ST-105D (dealer and/or auction sales to dealers for resale) or the ST-108E (for sales to non-dealers). Auction companies or auctioneers must keep a fully executed copy of the completed exemption form on file to document the reason for non-collection of the sales tax.
5. Auction companies or auctioneers not registered with BMV as a dealer shall provide the buyer with documentation of the sales transaction (sales invoice, purchase agreement, etc.) showing the total purchase price (including any buyer premium paid) and the amount of sales tax collected. Form ST-108A is available for auction company or auctioneer use to provide their customers with evidence of sales tax paid on the purchase of a vehicle, trailer, watercraft or aircraft not owned by the auction house or auctioneer.
6. Auction companies or auctioneers shall provide a copy of the sales transaction to the consignor/dealer for all sales sold at auction.

C. Dealer Versus Auction Company or Auctioneer Responsibilities Selling At Auction

1. The selling dealer is not responsible for the collection and remittance of sales tax for a vehicle, trailer, watercraft or aircraft sold at an auction site owned, leased or provided by the auction company, auctioneer or a third party. This responsibility is upon the auction company or auctioneer.
2. Selling dealer shall maintain a copy of the sales transaction, provided by the auction company or auctioneer, as documentation that such vehicle, trailer, watercraft or aircraft was sold at auction.

D. Dealer and Non-dealer Purchaser Responsibilities

1. A dealer who purchases a vehicle, trailer, watercraft or aircraft for the dealer's own personal use may not claim an exemption.
2. Dealers who purchase for resale must complete either a Form ST-105D (dealer/auction company or auctioneer sales to a dealer) or may issue a Form ST-108E. Form ST-105D may be used as either a single purchase or blanket purchase exemption certificate. ST-108E is a single purchase form for non-dealer purchases. Auction companies or auctioneers shall collect the sales tax for all sales at auction for which the purchaser has not provided a fully executed exemption certificate.
3. An auction company or auctioneer licensed as a dealer with BMV, and acting as a dealer, shall issue to a non-dealer purchaser a ST-108 or an ST-108E. The ST-108 shall serve as documentation of Indiana sales tax paid for their purchase. The ST-108E is completed if the purchaser claims an exemption from the sales tax. Auction companies or auctioneers not registered with BMV shall provide the buyer with documentation of the sales transaction (sales invoice, purchase agreement, etc.) showing the total purchase price and the amount of sales tax collected. Form ST-108A is available for use by an auction company or auctioneer not registered with BMV to document tax collected or an exemption, if claimed by the purchaser.

Effective July 1, 2004 ALL SALES of motor vehicles, watercraft and trailers purchased in Indiana are subject to Indiana sales tax. This includes sales where the purchaser intends to immediately register, license or title for use in another state. Nonresident purchasers of trailers and recreational vehicles (RV's) may qualify for exemption for purchases after June 30, 2006 if the purchaser is a resident of a reciprocal state and will register/title in their home state of residence. See sales tax exemption form ST-137RV on the Department's Web site.

III. MISCELLANEOUS INFORMATION FOR AUCTION COMPANIES OR AUCTIONEERS

- A. Exemptions Claimed by Purchasers** – Auction companies or auctioneers must receive signed exemption certificates from all purchasers claiming an exemption from the Indiana sales/use tax. Various exemption forms are available.

ST-105 – general exemption certificate which contains exemptions available to purchasers for all items except vehicles or watercraft.

ST-105D – used by vehicle or watercraft dealers who are purchasing for the purpose of resale only.

ST-108A – used by purchasers claiming an exemption on the purchase of a vehicle or watercraft for exempt purposes other than for the resale exemption.

- B. Farm equipment** consignment auctions are not entitled to automatic exemptions from the sales/use tax. Various equipment used by farmers are subject to sales tax as the equipment is not used directly in the direct production of foods or commodities for sale. Example: Lawnmowers, bushhogs, post hole diggers, bobcats, gators, and all terrain vehicles (atv's) are all examples of items commonly used on farms but are not generally used directly in direct production, thus are taxable. Auction companies or auctioneers must obtain a signed exemption certificate from any purchaser claiming an exemption. Sales tax must be collected in the absence of acceptance of an exemption certificate issued by the purchaser.

- C. Fairground and other Third Party Sites** where auctions are conducted may fall under the "casual" sale rules. If the auction site is rented, leased or provided by the auction company or auctioneer, where the auction company or auctioneer is ultimately responsible and liable for the auction site, all sales will be subject to the collection of sales tax by the auction company or auctioneer.

- D. Charity Auctions** conducted by an auction company or auctioneer are exempt if the charitable organization is conducting the auction for a fund raising activity to benefit the charitable purpose for which the nonprofit was established. The nonprofit organization must provide an exemption certificate to the auction company or auctioneer.

- E. Buyer's Premiums** added to the winning bid price become part of the gross retail income subject to sales tax. A **seller's premium** is not taxable.

IV. GARAGE SALES, RUMMAGE SALES or SIMILAR TYPE SALES (non-auction sales)

A garage sale, rummage sale, or similar sale that meets all of the following conditions is a casual sale and therefore the items sold are not subject to sales tax, nor use tax;

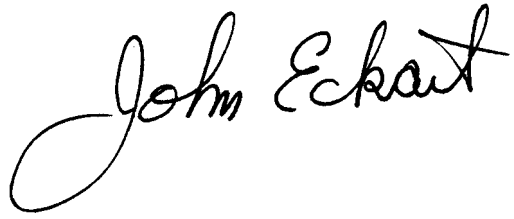
1. The sale must be at the residence of the owner of the tangible personal property;
2. The sale must be conducted by the owner or the immediate family of the owner of the property being sold;
3. The tangible personal property must not have been acquired by the owner for the purpose of resale;
4. All sales or use tax due on the original acquisition of the property must have been paid by the owner; and
5. The sales must be held on an infrequent basis.

In the event that certain tangible personal property being sold at a particular sale meets the above conditions but other property fails to meet such conditions, **the seller becomes a retail merchant and sales tax must be collected on the sale of all property failing to meet the conditions. Form BT-1 must be completed to register for sales tax. This form is available on the Department's Web site. (www.in.gov/dor)**

Example: An individual attends numerous garage sales throughout the year and purchases items to be resold in the individual's own garage sales which are held monthly. This person has violated conditions of the "casual sale" exemption rules 3, 4 and 5 shown above, thus must register as a retail merchant and must collect sales tax when he/she conducts their own garage sales.

If a taxable sale is conducted by the owner of the property, the owner must register as a retail merchant and must collect and remit the sales tax.

The sale of consigned tangible personal property is a retail sale and the consignee must register as a retail merchant and must collect and remit sales tax.

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive style, with the first letter of "John" being a large, looping capital "J".

Commissioner
John Eckart